

year that includes the sunset date (if the TARP recipient has never had an obligation).

**§ 30.13 Q-13: What actions are necessary for a TARP recipient to comply with section 111(e) of EESA (the shareholder resolution on executive compensation requirement)?**

As provided in section 111(e) of EESA, any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient that occurs during the TARP period must permit a separate shareholder vote to approve the compensation of executives, as required to be disclosed pursuant to the Federal securities laws (including the compensation discussion and analysis, the compensation tables, and any related material). To meet this standard, a TARP recipient must comply with any rules, regulations, or guidance promulgated by the SEC that are applicable to the TARP recipient.

[74 FR 63992, Dec. 7, 2009]

**§ 30.14 Q-14: How does section 111 of EESA operate in connection with an acquisition, merger, or reorganization?**

(a) *Special rules for acquisitions, mergers, or reorganizations.* In the event that a TARP recipient (target) is acquired by an entity that is not an affiliate of the target (acquirer) in an acquisition of any form, including a purchase of substantially all of the assets of the target, such that the acquirer after the transaction would have been treated as a TARP recipient if the target had received the TARP funds immediately after the transaction, acquirer will not become subject to section 111 of EESA merely as a result of the acquisition. If the acquirer is not subject to section 111 of EESA immediately after the transaction, then any employees of the acquirer immediately after the transaction (including target employees who were SEOs or most highly compensated employees immediately prior to the transaction and became acquirer employees as a result of the transaction) will not be subject to section 111 of EESA.

(b) *Anti-abuse rule.* Notwithstanding the provisions of paragraph (a) of this

section, if the primary purpose of a transaction involving the acquisition, in any form, of a TARP recipient is to avoid or evade the application of any of the requirements of section 111 of EESA, the acquirer will be treated as a TARP recipient immediately upon such acquisition. In such a case, the SEOs and the most highly compensated employees to whom any of the requirements of section 111 of EESA and this Interim Final Rule apply shall be redetermined as of the date of the acquisition. The redetermined SEOs and most highly compensated employees of the post-acquisition acquirer shall consist of the PEO and PFO of the post-acquisition acquirer, plus the applicable number of next most highly compensated employees determined by aggregating the post-acquisition employees of the acquirer (to include the pre-acquisition employees of the target employed by the acquirer, or anticipated to be employed by the acquirer), and ranking such employees in order of compensation for the immediately preceding fiscal year of the pre-acquisition target or pre-acquisition acquirer, as appropriate. In the case of an asset acquisition, the entity or entities to whom the target's assets are transferred shall be treated as the direct recipient of the financial assistance for purposes of determining which other related entities are treated, in the aggregate, as the TARP recipient under the definition of "TARP recipient" in § 30.1 (Q-1).

**§ 30.15 Q-15: What actions are necessary for a TARP recipient to comply with certification requirements of section 111(b)(4) of EESA?**

(a) *Certification Requirements—(1) General.* To comply with section 111(b)(4) of EESA, the PEO and the PFO of the TARP recipient must provide the following certifications with respect to the compliance of the TARP recipient with section 111 of EESA as implemented under this part:

(2) *First Fiscal Year Certification.* (i) Within ninety days of the completion of the first annual fiscal year of the TARP recipient any portion of which is a TARP period, the PEO and the PFO of the TARP recipient must provide